

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	MB Docket No. 16-357
)	
Entercom License, LLC)	Facility ID No. 65483
)	
Applications for Renewal of License for Station)	File Nos. BRH-20050728AUU and
KDND(FM), Sacramento, California)	BRH-20130730ANM

ORDER

Adopted: July 3, 2019

Released: July 8, 2019

By the Commission:

1. By this order, we deny an application for review (AFR) filed June 6, 2018, by Edward R. Stolz II (Stolz). Stolz seeks review of an order by the General Counsel¹ dismissing and denying Stolz's petition for reconsideration of a Commission memorandum opinion and order that (1) dismissed and denied an earlier petition for reconsideration and (2) dismissed an earlier application for review filed by Stolz.²

I. BACKGROUND

2. This renewal proceeding for Station KDND(FM) was designated for hearing to determine whether the Commission should renew the Station KDND(FM) license held by Entercom License LLC (Entercom) in light of a station contest that resulted in a contestant's death.³ Rather than litigate the case, Entercom surrendered its license for Station KDND(FM), and the Administrative Law Judge (ALJ) terminated the proceeding.⁴

3. As noted above, both the *GC Order* that Stolz asks us to review here and the underlying *Commission Order* that the General Counsel addressed on reconsideration concern Stolz's challenges to two separate earlier orders in this proceeding. First, Stolz has repeatedly and unsuccessfully attempted to dispute the portion of the Hearing Designation Order (HDO) that found that Stolz lacked standing to be a party in this proceeding.⁵ The Commission dismissed Stolz's petition for reconsideration of the HDO on the ground that Stolz had failed to raise in a timely manner the bases on which he then asserted standing.⁶ As an alternative and independent ground for its decision, the Commission denied that petition for reconsideration because, even if Stolz had timely raised his additional arguments for standing, these additional arguments did not demonstrate that he had standing to be a party.⁷ The General Counsel dismissed Stolz's petition for reconsideration of the Commission's ruling because, under the

¹ *Entercom License, LLC*, Order, 33 FCC Rcd 4605 (2018) (*GC Order*). The General Counsel issued this ruling under delegated authority pursuant to 47 CFR §§ 0.251(b)(2), 1.106(k)(3), and 1.106(p).

² *Entercom License, LLC*, Memorandum Opinion and Order, 32 FCC Rcd 7149 (2017) (*Commission Order*).

³ *See id.*, 32 FCC Rcd at 7149-50, paras. 2-5.

⁴ *Entercom License, LLC*, Order, FCC 17M-09 (ALJ Mar. 16, 2017) (*ALJ Order*).

⁵ *Entercom License, LLC*, Hearing Designation Order, 31 FCC Rcd 12196, 12206, para. 23 (2016).

⁶ *Commission Order*, 32 FCC Rcd at 7151-52, para. 10.

⁷ *Id.* at 7152-54, paras. 11-15.

Commission's rules, a petition for reconsideration of an order that denies reconsideration of an earlier order without modifying it is subject to dismissal by staff as repetitious.⁸

4. Second, Stolz has likewise been unsuccessful in challenging the *ALJ Order* terminating this proceeding. Because Stolz lacked standing, the Commission dismissed as unauthorized his application for review of the *ALJ Order*.⁹ The Commission found that only a party to the proceeding is authorized under the Commission's rules to appeal such a termination order and that Stolz was not a party.¹⁰ As an alternative basis for its dismissal, the Commission concluded that Stolz could not file an application for review because he was not aggrieved by the *ALJ Order*.¹¹ In the *GC Order*, the General Counsel found that Stolz's petition for reconsideration of the *Commission Order* failed to address the procedural defects that had resulted in dismissal of his earlier application for review, instead making arguments for why his application for review should have been granted on its merits.¹² Because Stolz did not address the primary and sufficient ground on which the Commission had dismissed his application for review, the General Counsel found that his petition plainly did not warrant consideration by the Commission and therefore denied his petition.¹³

5. In the AFR now before us, Stolz again advances the arguments that the General Counsel rejected on procedural grounds. Stolz contends that the General Counsel erred in finding that Stolz's petition for reconsideration was repetitious.¹⁴ In this regard, Stolz claims that his petition was not repetitious because it presented two new arguments: (1) that the Commission impermissibly favored Entercom in comparison to individual licensees by not considering misconduct at Station KDND(FM) as relevant to Entercom's qualifications to hold other licenses,¹⁵ and (2) that the Commission should investigate whether Entercom's relinquishment of Station KDND(FM)'s license (which the ALJ relied on in terminating the hearing in this proceeding) was sufficient to deter future misconduct by Entercom.¹⁶

II. DISCUSSION

6. We affirm the General Counsel's rejection of Stolz's petition for reconsideration. The Commission previously considered and rejected Stolz's attempt to seek reconsideration of the Commission's conclusion in the HDO that Stolz lacks standing to intervene as a party in this proceeding.¹⁷ The General Counsel correctly found that Stolz's petition for reconsideration of the Commission's order denying reconsideration of the HDO was repetitious under Section 1.106(k)(3) of the

⁸ *GC Order*, 33 FCC Rcd at 4606, para. 4; see 47 CFR §§ 0.251(b)(2), 1.106(k)(3).

⁹ *Commission Order*, 32 FCC Rcd at 7154, para. 16.

¹⁰ *Id.*

¹¹ *Id.*

¹² *GC Order*, 33 FCC Rcd at 4606, para. 5.

¹³ *Id.*; see 47 CFR § 1.106(p).

¹⁴ AFR at para. 10.

¹⁵ *Id.* at paras. 11-14.

¹⁶ *Id.* at paras. 15-18. While not necessary to our rejection of these arguments here on procedural grounds, we note that we have elsewhere rejected both of these arguments on the merits. See *Entercom Sacramento License, LLC*, Memorandum Opinion and Order, 33 FCC Rcd 6615, 6618, para. 10 & nn.31, 33 (2018), *recon. dismissed*, Order on Reconsideration, 33 FCC Rcd 10704 (2018); cf. *Entercom Communications and CBS Radio*, MB Docket No. 17-85, Memorandum Opinion and Order, 33 FCC Rcd 6621, 6623, para. 5 (2018), *recon. dismissed in part and denied in part*, Order on Reconsideration, 33 FCC Rcd 10707 (2018) (finding that alleged misconduct at a station is not relevant to transferability of other stations).

¹⁷ *Commission Order*, 32 FCC Rcd at 7151-54, paras. 10-15.

Commission's rules.¹⁸ Under this rule, the Commission's action on Stolz's earlier petition would have been subject to further reconsideration only if the Commission had reversed or modified the HDO, which the Commission did not do. Stolz cites no rule or case precedent in support of his claim that his arguments are permissible notwithstanding this provision. Further, Stolz did not argue in seeking reconsideration of the *Commission Order* that he has standing and does not now explain how his arguments would provide a basis for granting him standing. The General Counsel also correctly found that Stolz did not challenge the findings that as a non-party he lacks standing to challenge the *ALJ Order* and that he was not aggrieved by that order.¹⁹ The General Counsel correctly concluded that without standing, Stolz is barred from challenging the presiding judge's termination of the hearing, as he attempted to do in his earlier application for review, for reasons we explained in our earlier order.²⁰

7. Stolz also questions the validity of the rules giving the General Counsel authority to issue the *GC Order* under delegated authority,²¹ arguing that they conflict with 47 U.S.C. § 402(b), the Administrative Procedure Act, and administrative due process.²² Our conclusion affirming the merits of the *GC Order* renders moot any claim that the General Counsel was unjustified in exercising his delegated authority.²³ The Commission, moreover, has the statutory authority to delegate its functions when appropriate.²⁴ The rules in question here serve the valid purpose of relieving the full Commission of the burden of dealing with petitions that are patently without merit.²⁵ Further, Stolz has not been denied his right to appeal the denial of reconsideration of the *Commission Order* to the Court of Appeals, inasmuch as he can do so now in response to our denial of his AFR.²⁶

III. ORDERING CLAUSE

8. Accordingly, IT IS ORDERED that the Application for Review filed June 6, 2018, by Edward R. Stolz II IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹⁸ *GC Order*, 33 FCC Rcd at 4606, para. 5.

¹⁹ *Id.*

²⁰ *Commission Order*, 32 FCC Rcd at 7154, para. 16.

²¹ *See supra* note 1.

²² AFR at paras. 9-10.

²³ *See Murray Energy Corp. v. FERC*, 629 F.3d 231, 236 (D.C. Cir. 2011) (agency's ratification of staff decision resolved any potential problems with staff's exercise of delegated authority); *PMCM TV, LLC v. RCN Telecom Services, LLC*, Memorandum Opinion and Order, 32 FCC Rcd 7200, 7217, para. 26 (2017), *appeal denied*, *PMCM, LLC v. FCC*, Nos. 17-1209 & 1210 (D.C. Cir. June 20, 2018).

²⁴ The Commission may delegate its functions "[w]hen necessary for the proper functioning of the Commission and the prompt and orderly conduct of its business." 47 U.S.C. § 155(c)(1).

²⁵ *See Amendment of Certain of the Commission's Part 1 Rules of Procedures and Part 0 Rules of Organization*, Report and Order, 26 FCC Rcd 1594, 1606-07, paras. 26-30 (2011) (*Procedural Order*).

²⁶ *See Procedural Order*, 26 FCC Rcd at 1607, par. 30 & n.87 (a party aggrieved by a staff dismissal or denial may file an application for review with the full Commission).